

# Transcript of Radio Ombudsman #13: Rosemary Agnew on the benefits of being a Complaints Standards Authority

In our latest Radio Ombudsman podcast Rosemary Agnew, Scottish Public Services Ombudsman, tells Rob Behrens how a model complaints handling process can benefit individuals and public services as a whole.

**Rob Behrens:** Hello, this is Rob Behrens here, welcoming you to another episode of Radio Ombudsman. I'm delighted to say that my guest today is Rosemary Agnew, Scottish Public Service Ombudsman.

Rosemary took up the post of Ombudsman around the same time as I did, in 2017, and before this she was the Scottish Information Commissioner. She has a wealth of experience in public service, which we'll come on to. She has developed the idea of a complaint's standards authority in Scotland, which is something that I want to ask her about.

Rosemary, you're very welcome. Thank you for coming. Now, we like to start each episode by hearing a bit about our guests and where they come from. So, can you tell us a bit about your early life and the values you got from that?

**Rosemary Agnew:** I am hugely lucky, I come from a very loving family. I have four younger brothers, so I think it fair to say that issues about equality were probably in there before I even knew the word. (Laughter) But, my family are a military family, so I travelled around as a child. Mostly, I'd say, what I got from them was a real strong moral compass. Not drilled into me, "Must do this, mustn't do that," but about treating people

with respect, particularly when we were travelling to new places and meeting new people for the first time.

I think that that moral and ethical background, not called that then, it was just to try and be a good person, tell the truth, do your homework on time, all these sort of things, probably instilled in me a strong work ethic. But, it also instilled in me a very deep level of caring for people, because I was able to see, over the whole of my life, still am, a whole range of people who have different starts in life, different opportunities. I think within that I've developed my own sense of justice.

I'm hugely grateful to my parents. They're lovely people. I even get on with my brothers occasionally.

**Rob Behrens:** (Laughter) When you were travelling around as part of the military family, was that difficult? Did you feel like an outsider?

**Rosemary Agnew:** Yes and no to outsider... I went to a lot of schools so you had to learn to make friends quickly, and you couldn't have a long lead-in time, if you like. Because I lived a lot of time in military accommodation that was like a big family of itself, because you tended to be with people who were in a similar situation.

But mostly, I suppose, I just saw it as a big sense of adventure. It doesn't suit all, but for me it was great because I just moved around and had a whole wealth of experience which I don't think I would've got in any other way.

**Rob Behrens:** What did you study at university?

**Rosemary Agnew:** Well, my main claim to fame, I think, sitting here in Manchester, is the thing that I'm probably most pleased with, that's my MBA from Manchester Business School. I also have a teaching qualification. But I think the MBA, because I went back to that after I'd been working a while, was probably the most enlightening part of my education. Again, I learnt a lot about a lot of things, but what it gave me, because I was able to reflect on a working background as well. What it gave me was a sense of how to ask questions and challenge in a way, perhaps, I hadn't done before that.

**Rob Behrens:** They're very famous alumni from that MBA, I think Vincent Kompany is a graduate of that scheme. Did you know him?

**Rosemary Agnew:** No, I didn't. (Laughter) In fact, I don't think that any of my cohort are names that have come up to prominence, but have all gone on to do good things, some very interesting things. I, for myself, because I was public sector at the time and I've remained public sector for most of the time since then, perhaps have a slightly different view of it. I was very deliberate in not always going down public sector routes for study, or public sector modules, because I wanted to learn more about different sorts of thinking.

**Rob Behrens:** When did you decide what sort of career you wanted?

**Rosemary Agnew:** I'm yet to meet an Ombudsman who decided they wanted to be an Ombudsman.

**Rob Behrens:** Yes, I can own up to that.

**Rosemary Agnew:** Fair to say that when I was working in China, lecturing in business and economics, and I needed a job when I got back. So, I thought, "They're advertising for investigators at the Local Government Ombudsman that will do for a while. It'll pay the mortgage until I get something else." I've pretty much never left Ombudsmanning or information commissioning since.

I think what it was that I found a job that I enjoyed, it was challenging but actually fitted in with my value system.

**Rob Behrens:** Right and you've have had a very distinguished and varied career. You were the Scottish Information Commissioner. What was the highlight of that before you came to the Scottish Public Service Ombudsman?

**Rosemary Agnew:** I think it's hard to say what a highlight is in terms of being the Information Commissioner. There are a number of things that I did that I was really proud of in a good way. One of them was...it sounds very trivial...but we established a portal for the uploading of freedom of information statistics from public bodies in Scotland.

What that means is, now there is a three or four year database of the number of freedom of information requests and the outcome of them for the whole of Scotland, where we can look at trends and we can look at developments. That, actually, for me, was a highlight because I didn't necessarily have the enforcement power to do it, it was done through cooperation and co-working with public bodies.

The other couple of things that really stick in my mind were very, very early on a particular decision I made, which was enforcing and telling the Scottish government they had to disclose whether they had taken legal advice about Scotland's position with Europe should they gain independence, because it was the time of the independence referendum.

Why that's particularly interesting is it was a very big issue, I think, in the independence referendum, and nobody, I think, would have foreseen where we are now.

The final one, which I think I'll talk about more when we maybe talk about some of the Ombudsman powers, was about a different way of intervening in relation to good and poor practice with Scottish public bodies.

**Rob Behrens:** You're English, I think, is that correct?

**Rosemary Agnew:** Yes.

**Rob Behrens:** So, has there ever been an issue about you holding prestigious and important jobs in Scotland? About an English person having that responsibility?

**Rosemary Agnew:** No. I have a Scottish name, Agnew is a Scottish name, and I am married to somebody from Scottish descent. I was once asked by a journalist, “Was I happy that I had adopted Scotland as my home?” (laughter) and I think it’s fair to say the answer reflected how I felt, which was, “I’m eternally grateful that Scotland has adopted me as somebody who lives there and does these things within Scotland.”

But no, it’s a different experience to being in England, but I’ve never, not to my face anyway, had an issue with being English.

**Rob Behrens:** That’s good to hear.

Now, can we just talk a bit about the Scottish Ombudsman, which you took up post nearly three years ago. The devolved Ombudsmen are different from the UK Ombudsman because they’re more modern, they’ve adopted legislation to make them more relevant to developing situations, and you have more powers than the UK Ombudsman has.

What’s it like being the head of an integrated public service Ombudsman? Is that a good thing?

**Rosemary Agnew:** Yes, I think it’s a very good thing because you have a different sort of insight, you have a different sort of overview, and sectors do vary. There is variance because they’re working to different regulations. It makes your job very varied also.

I think one of the challenges with it though is, if you work in a specific sector, so if I reflect on local government

Ombudsman, you became much more immersed in the technicalities of local government. When you work across sectors what we find, and particularly a personal reflection, is I have to do a bit more digging around to find out about how the sectors operate in Scotland.

I also rely quite a lot on professional advice, particularly for health and social work. So, we don't necessarily develop through experience or volume of cases the same experience that you do when you're, perhaps, looking at one particular area of public service.

But the other thing that I think reflects with myself and the Welsh and the Northern Ireland Ombudsman, is because the population of the country is smaller and the country itself has a different sort of structure to it, you often get given things to do that are not necessarily what you'd expect an Ombudsman to be doing.

So, as well as complaint handling and the complaints standards, we also have duties with the final stage of appeal for a benefit, Scottish Welfare Fund. Then when you look at Northern Ireland and Wales, they also have things that are different. I think that is as much a challenge as anything, because it's almost like running two completely different functions, but trying to have an integrated organisation.

**Rob Behrens:**

So, you rely on professional advice, but there must also be a challenge for your case handlers to deal with the width of functions that they come up with? Are you divided according to the sectors or do people have multitasking to do?

**Rosemary Agnew:** They have multitasking to do. They are an incredible set of people, my investigators. But I think one of the things that drives us and that is probably the uniting thing is, very much, about values. I think, like most Ombudsman organisations I've ever come across, it's a fairly unique workforce, I would say. You ask anybody why we're there, and very rarely will you deviate far from, "Because we want to make a difference. Because we want to see improvement. Because we want to make things better."

So, yes it's a challenge having the scope, and we have some individuals who may have a background in a particular area, but we don't have specialists.

**Rob Behrens:** Ok, now what you have which we don't have is the status of being a Complaints Standards Authority. Could you explain to our listeners, briefly, what that means?

**Rosemary Agnew:** Briefly, what it means is the Ombudsman is responsible for setting a model complaints handling process that all Scottish bodies must follow. We then, with that, have a duty to monitor performance in relation to complaint handling and, combined with some of our other powers, a duty to enforce good practice, to report on it.

Now, that sounds, "Oh, that's nice, model complaints handling," but what it means in practice is, with some slight variations by sector because different sectors have slightly different needs... It means that anybody making a complaint to a public body in Scotland and about a public body in Scotland is, basically, making a complaint under the same set of standards.



So, the model complaints handling process says that the first stage of a complaint, you must try and respond within five working days to resolve it. Very big focus on resolution. If you can't, or the person is not satisfied, you can then take another 20 working days to look at it in more detail. If it's something that you think you need more than 20 days for then talk to the complainer about that.

It essentially means that if somebody does not receive a response or doesn't receive a response in time, they get to the Ombudsman a lot quicker than they might otherwise do.

The other benefit of the model complaints handling process is that there is a very strong focus on learning from complaints. So, the standards that go with this, which, incidentally, I have to lay before the Scottish Parliament, the standards. They also have a very strong bent on learning from complaints.

I think that's an area where we can, perhaps, develop more in how we hold public bodies to account to demonstrate that learning. Because like our complaints, the model complaints handling we have to show that there is an impact and that there is value to individuals and to public services as a whole.

I think, for me, the most valuable thing about it though is it gives you an opportunity to work with public bodies, not always in opposition to them. With the best will in the world, however much you try a resolution or a discursive way of looking at complaints, once a complaint has reached the Ombudsman it is, in many ways, adversarial, whether you want it to be or not.

But, when you're talking about complaint handling as a whole, you have an opportunity, actually, to help public

bodies and encourage them to get better at complaint handling. Which you hope means they get better at learning from complaints, which means people get the right service the first time.

I don't think we'll ever eliminate complaints, but hopefully it will make it a more productive experience.

**Rob Behrens:** I'm a full supporter of what you're doing. I'm a burglar of your practice. When I was the higher education Ombudsman I stole it hook, line and sinker, to use in English universities. The idea that they could resolve complaints within five days was anathema to them, they wouldn't have that. We ended up with 90. But, nevertheless, they did it.

The difference and the radical nature of what you do is, effectively, you are a regulator now, whereas Ombudsmen have traditionally always said, "We rely on our moral authority, not on a coercive power." Has that made a difference or is it just words?

**Rosemary Agnew:** No, I don't think it has made a difference yet. I also think I should add that I wasn't Ombudsman when the Complaints Standards Authority came in, and credit has to go to Jim Martin, my predecessor, for driving this. What he's left me as a legacy is something really good to develop and work with, which is what we're doing now.

Having been Information Commissioner, which really is a regulatory function, your decision is binding or you go to court. I think the concept of regulation probably hasn't crept into our thinking with complaints standards in quite the same

way. But it is something that we're currently developing, but maybe not calling it regulation in the same way.

One of the things that I would say, learning from hindsight, is that we took a very structured approach of rolling it out sector by sector, this model complaints handling. What that meant was, it was a number of years before every public body in Scotland was following this. So, the NHS was the last, and I think they're just coming up to the end of their second year.

Now, if you compare that to the first, which was local government.... In local government now a really high percentage of complaints get responded to in the first instance, in the five working days. I think, from memory, it's over 80%. That's really significant for complainers.

Now what we've been looking at in the last few months, and we went live with in April, is what we've called our support and intervention policy. This is a concept that I brought with me from being Information Commissioner and was basically looking at all the powers that you have as an Ombudsman, because the real value comes in the combination of them, not just the individual bits.

So, when you look at the powers to set complaint handling processes to take action if complaint handling falls short, you then look at other things like your information gathering powers. We've created a framework which sets out what our powers are and within that what we are going to do to either support or, if necessary, intervene.

For example, a simple example, we might see a number of complaints from a public body where the final response that they give to the complainer does not signpost the Ombudsman. They have a duty to do that under the

complaints handling process. So, we are getting better at our own intelligence. We're logging feedback recommendations and observations from what we see in complaints. So, if we spot something like that we might just... Well, my investigators, my complaints reviewers, will let the public body know. We give feedback in decisions.

If we keep seeing that we might give it more formally and say, "We spotted this a number of times..." But is there any help? We might offer to, say, share a template letter. Or if it's something different, perhaps go and give them some training, if we've got the resource to do that.

But we set it out step by step, at which point it becomes a management issue, and senior managers might actually contact senior managers or chief executives. The ultimate being, we use the powers that the Ombudsman has to enforce and report.

**Rob Behrens:** This sounds very incremental and civilised. But, do you come across intransigence?

**Rosemary Agnew:** Well, it went live in April and, so far, we've not found intransigence. I think some of this is drawing on the experience of the Information Commissioner, and I'll give you a very simple example. Similar powers to compel production of information for an investigation, and telling public bodies, very formally, "If you do not provide this, this and this, by this date, I will report on this. I will take further action." It can actually be treated as contempt of court in Scotland.

So, you only need to make that clear that you're going to do it, do it once and then report on it in your annual report.

And, actually, public bodies realise, I think, that you're being serious. But, we try to get to a point before that where you point out, "This is the value, particularly for the complainer, of doing this."

So we're in early days. We haven't come across the real intransigence yet. But, I've no doubt that there'll be some there at some point. The word 'civilised' is a good one, and we will endeavour to be as civilised as we can, but firm with it.

**Rob Behrens:** You report to the Scottish Parliament.

**Rosemary Agnew:** Yes.

**Rob Behrens:** What is your relationship like with that body?

**Rosemary Agnew:** I'd say it's pretty good in the sense of its open, challenging, and when I say friendly I don't mean we're all friends, it's very professional in many ways. My main dealings are with the Scottish Parliamentary Corporate Body. I get my funding through them, so we have contact with them on a fairly regular basis.

Each year I appear before the Local Government and Communities Committee to be held accountable for my annual report. So, they'll ask me questions about our performance and about what we're doing.

I do appear before other committees as well, either in relation to other policies or in relation to other consultations that we've responded to.

I would say, in Scotland, that, generally, the Ombudsman is held in high regard and seen as being independent and impartial. Probably the most telling evidence of this is we're taking on new powers next year.

**Rob Behrens:** This is about whistleblowing?

**Rosemary Agnew:** Yes, I'm taking on the wonderful title of Independent National Whistleblowing Officer for the NHS in Scotland.

**Rob Behrens:** Wow!

**Rosemary Agnew:** The reason that we are taking on this function is because in the government's public consultation it was suggested it should be the Ombudsman. It's another good example of how, in a smaller jurisdiction, you get a number of different things.

But, going back to parliament, they have held me to account on things, but also where I have brought something to them in my committee appearances they've also been quite supportive. So, one of my beefs about my legislation is complaints must be in writing, unless there are special circumstances. Now, the problem with that is the onus is on the complainer to show special circumstances. It means you can't be as flexible in how you take complaints.

I've been trying, since I became Ombudsman, to have the legislation, and it is secondary legislation, to say I can take complaints in any format. At the last parliamentary appearance, the committee did actually write to the government and say, "We think this is a good idea, please could you look into this again for us."

Sadly, the Scottish government are not taking it forward at this time because they have other business and don't have the resource, apparently, which is very disappointing.

**Rob Behrens:** We're coming towards the end but let me ask you a few quick-fire questions. You're funded differently to the way we're funded, because we get our money from a broad treasury vote. But, you're funded through parliament. Have you got enough money? Is that a satisfactory way to do things?

**Rosemary Agnew:** No, I haven't got enough money. It's satisfactory in the sense of, I think, it is good that the funding doesn't come from government. It adds something to you being able to say, "I am independent." What I think is unsatisfactory about it is, and it's probably the same for you, the annularity of it. It's very difficult to do proper business and resource planning when you can't guarantee you will have the money to do it next year. It also means I feel I do go through some fairly unnecessary hoops just to get one additional member of staff or an extra little bit of money for this.

Where it does work well, and where I think the corporate body really try hard for myself and other parliamentary crown appointments, is they hold a contingency fund to

which we can apply for unexpected things. So, if we were judicially reviewed we could get legal costs through that. That works well to a point. We had some unexpected IT costs this year which we were able to go to the contingency fund.

Generally, I think Ombudsman across the UK are underfunded. If we had sufficient funding we wouldn't have backlogs of cases and we would be doing things quicker. But, we have to make do with where we are at the moment.

**Rob Behrens:** Two final questions, Rosemary. First of all, going forward, what's your biggest challenge as the Ombudsman? Are you an Ombuds or are you an Ombudsman?

**Rosemary Agnew:** I'm happy to be an Ombudsman because that's what the legislation says and I know the origins of the word. But, equally, I don't mind if other people call me something similar, whatever they're comfortable with. It's the spirit of what we do that's really important.

I think my biggest challenge, and the biggest challenge for my office, is a combination of resourcing and the whistleblowing work that's coming next year. That's fundamentally different, in some ways.

**Rob Behrens:** Will you have regulatory powers?

**Rosemary Agnew:** My powers will be very similar as they are to Ombudsman. But that doesn't worry me.



**Rob Behrens:** This is big.

**Rosemary Agnew:** Yes.

**Rob Behrens:** And it's very different from what happens in England.

**Rosemary Agnew:** It's almost two similar but completely distinct functions. They're two different titles that go with them, Ombudsman and Independent National Whistleblowing Officer.

**Rob Behrens:** Will you get a pay rise as a result of that? (Laughter)

**Rosemary Agnew:** I don't know. I say I would like one. I'd do the job anyway. But, I suppose, for me, the issue of the pay is not so much for my tenure but for future Ombudsman. I have a real concern, in common with fellow Ombudsman in the UK, that if you don't pay your Ombudsman enough to attract good Ombudsman you can't forever rely on what I think has happened so far, where in Scotland we've just got good people who've been attracted to the work. So, I hope they up the pay, but if it's not for me I don't mind.

**Rob Behrens:** What does the legislation say about second terms for Ombuds?

**Rosemary Agnew:** In Scotland there are no second terms.

**Rob Behrens:** So, after five years you have to move on, do you or is it seven?

**Rosemary Agnew:** I have eight years. So, under public sector law it can be four to eight years. As Information Commissioner I actually had a six-year tenure. This one is eight years. But, at the point that I became Ombudsman it was already known that we would be taking on the whistleblowing, so it's probably right for that, because the nearly three years of getting to the point of knowing what the legislation is going to say has been over in the blink of an eye.

**Rob Behrens:** Okay. Last question: we're in Manchester, this is a young, thriving organisation full of young graduates who've just come into the Ombudsman world, perhaps 120 young graduates in the last 18 months. You're an experienced, highly respected member of the profession, if I can call it that. What would be your advice to my colleagues just coming into the Ombuds field?

**Rosemary Agnew:** Don't ever lose sight of the passion of what drives you to do the right thing for the right reasons. But, leave 'Ombudsmanning' for a while, go and do something else, and come back to it so that you can see just how wonderful a values-based organisation is, but also so you have a different perspective on world experiences.

**Rob Behrens:** That's lovely. Rosemary, it's been a great privilege for us to listen to you. Thank you very much indeed.

**Rosemary Agnew:** It's been a pleasure to be here, Rob.